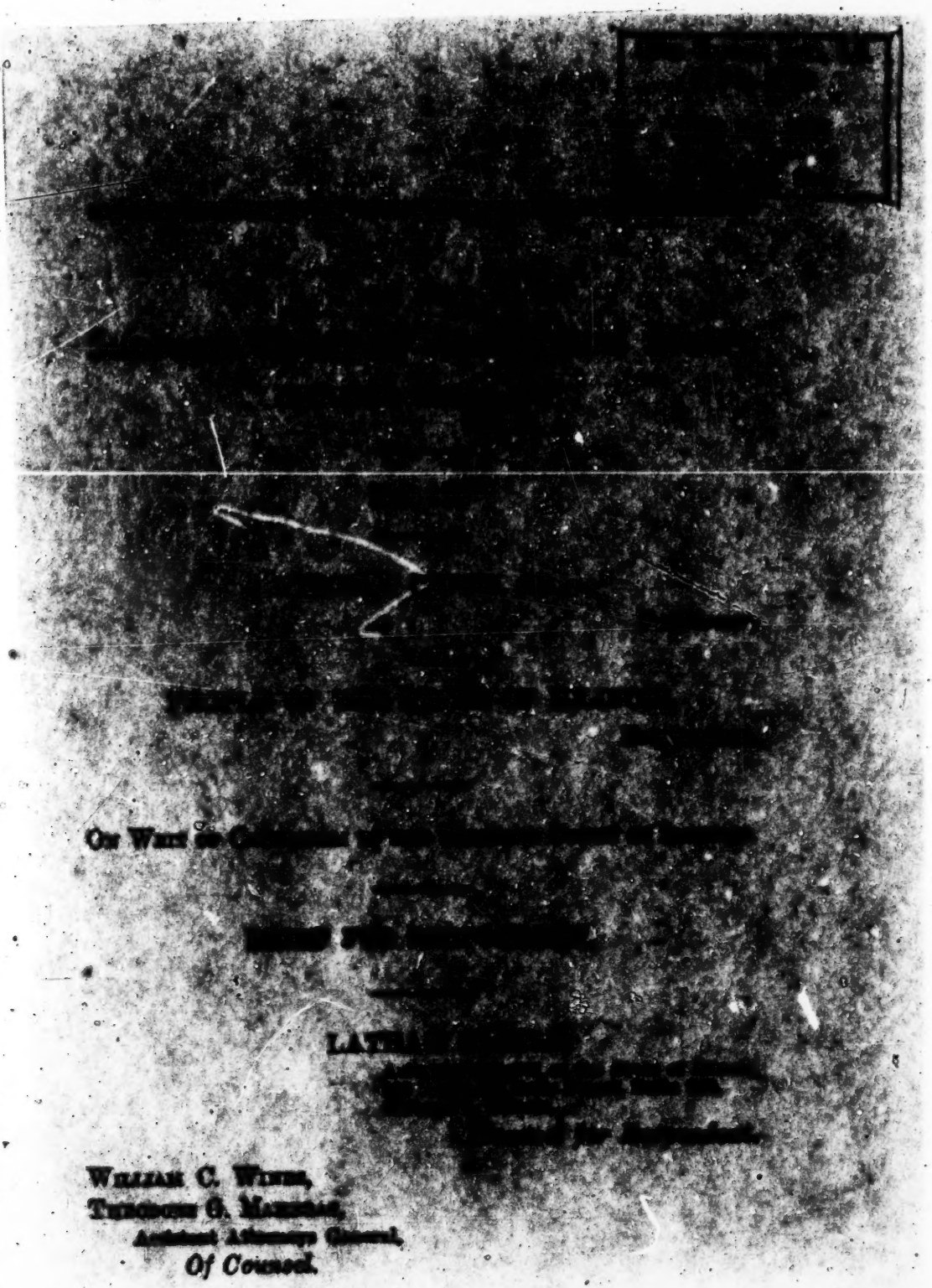

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 157

VINCENT CIUCCI, SR.,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENT.

STATEMENT OF THE CASE.

All of the facts relied upon by petitioner for reversal and by respondent for affirmance are stated in the unanimous opinion of the Supreme Court of Illinois.

Petitioner was charged by separate indictments with the slaying of his wife, and each, respectively, of their three children.

The Supreme Court of Illinois thus states the essence of the uncontradicted evidence: (*People* v. *Cuicci*, 8 Ill. 2d 619, at pp. 622-24)

> "The record shows that defendant, with his wife and their three children, lived in the rear portion of a brick

building. They operated a small grocery store in the front portion. At two o'clock in the morning of December 5, 1953, the building was discovered in flames. Defendant was observed in a crouched position inside the front door of the store portion, which had a glass panel, and two persons in the neighborhood broke the door and pulled him out of the burning building. Firemen later arrived and removed the bodies of his wife and three children, which were still lying in their respective beds. The bodies were taken to the county hospital, where they were pronounced dead. Upon removal to the morgue it was discovered that each had a hole penetrating the head.

"The day before the fire defendant had borrowed a .22-caliber rifle from a friend, stating that he wanted to go hunting for rabbits. After the fire subsided the rifle was found separated into its two parts in a kitchen wardrobe cabinet. Two days later police officers found several empty .22-caliber cartridge cases on the premises. Ballistic tests proved these to have been fired from the rifle borrowed by defendant. They also found portions of a sheet, a pillow slip and a pillow, all of which bore human blood stains, the latter also containing a bullet. Bullets were found in the brains of the wife and daughter, and the son's head contained a wound which an expert testified was caused by a bullet passing through the head from the right side and leaving the left side.

"For two or three years prior to the fire defendant had been acquainted with a 21-year-old girl named Carol Amora. In May, 1952, her father died leaving her an inheritance of $2300. From time to time she loaned defendant a total of $1300 of this to enable him to buy a car and pay debts. They began having sexual relations, and lived together for a time in a hotel. Defendant stated his wife would not give him a divorce but only separate maintenance. After Carol became pregnant by him, he stated he owed back 'alimony' to his wife, and could not afford to keep Carol with the baby coming in addition to his wife and three children. After the baby was born they resumed sexual relations, defendant expressing intentions of getting a divorce.

"On the day of the fire the defendant, while in the hospital, gave a lengthy statement to the authorities in which he related that on the preceding night his children went to bed about 10:30 o'clock, his wife retired at 11:30, and he went to bed a short time after midnight; that the next thing he remembered was a feeling of heat and shortness of breath; that the building was filled with smoke, causing him to gag for breath; that he called to his wife, leaped out of bed and tried to reach the telephone; and that he then ran through the store, banged on the front door and broke the glass.

"Defendant did not testify at the trial. Three witnesses were called on his behalf. Two of them testified defendant loved his son; and the third, a neighbor, testified that about two o'clock in the morning of December 5, 1953, he heard a loud booming noise and the shouting of people; that he looked toward the building in question and saw smoke and flames coming from it, and that he ran to the front of the building and helped pick up the defendant, who was lying on the ground half in the vestibule and half outside. No evidence was offered to dispute or explain the principal facts brought out by the evidence for the prosecution."

The instant conviction is for the killing of petitioner's
n Vincent, one of the children.

Dealing with petitioner's contention that his trial and
nviction in this case were barred by convictions in pre-
ous cases arising from the same fire, the Supreme Court
Illinois said (8 Ill. 2d 619, at p. 629):

"It is assigned as error that the court denied a 'motion to dismiss' on the ground of former jeopardy. Defendant had been tried and convicted in two previous trials for the murders of his wife and daughter respectively. He now argues that the two former prosecutions were for the same offense as the present one, and hence operate as a constitutional bar to this prosecution. The long-established test of former jeopardy, however, is whether the facts charged in the latter indictment would, if found to be true, have justified a conviction under the earlier indictment. (*People* v. *Allen*, 368 Ill.

368.) When this test is applied here it is obvious that under the indictment for murder of his wife a verdict could not be sustained finding him guilty of murdering his son. It is the identity of the offense, and not of the act, which is referred to in the constitutional guaranty against double jeopardy; and where two or more persons are unlawfully killed, even though by a single act, there is a corresponding number of distinct offenses. (*People* v. *Allen*, 369 Ill. 368.) In the case at bar not only were these separate offenses, but the acts themselves, *i. e.*, the shootings, were separate and distinct. There is no merit to the present contention."

Petitioner also complained that evidence of the deaths of his wife and other children, together with evidence that each of them had been shot through the head, was unconstitutionally admitted. The Supreme Court of Illinois held that evidence of these other deaths was admissible as part of the *res gestae*. (R. 368.)

Petitioner also contended that evidence of his illicit sexual relations with Carol Amora was prejudicially admitted. The Supreme Court of Illinois held this evidence admissible as tending to show a motive to dispose of petitioner's family.

> "No evidence was offered to dispute or explain the principal facts brought out by the evidence for the prosecution."

SUMMARY OF THE ARGUMENT.

I.

The separate prosecutions of petitioner for several deaths, inflicted by separate shots, even though the killings were virtually simultaneous, is in accordance with the well-nigh unanimous force of juridical opinion. Therefore such prosecutions do not offend "the very essence of a scheme of ordered liberty" or

> "violate a 'principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" *Palko* v. *Connecticut*, 302 U. S. 319.

A jury may well deem the killing of a child a more serious offense than a killing of an estranged spouse and inflict a more serious punishment for such a killing.

II.

Neither authority nor practice supports petitioner's contention that he was entitled to a pleading apprising him that on his trial for one of the killings, evidence of the other killings would be offered. The contention raises at most a question of state evidence and practice in criminal cases.

ARGUMENT.

I.

The several prosecutions of petitioner for the alleged separate slayings of different individuals did not deny him due process of law.

In delimiting the questions raised and argued by petitioner, we note at the outset that

(1) This is not a case in which petitioner has been *acquitted* of other murders or crimes arising from the same transaction,

(2) Nor is it a case where two sovereigns seek to prosecute the same defendant upon the same or substantially the same factual complex,

(3) Nor is it a case in which different aspects of the same single criminal act are made the basis of different cumulative charges against the same defendant.

On the contrary, in this case four people were slain. Each of them was separately shot through the head. Although all of the victims perished in a single fire, this is not a case in which a single fire was the sole cause of the deaths of more than one person.

This is a case in which four people were shot to death in separate although consecutive acts.

The principal and we believe the only serious question presented is whether Illinois denied due process in prosecuting petitioner separately for each of these several and distinct homicides.

Mindful that this Court's grant of *certiorari*, although intimating no decision on the merits, imports the presence of a question of such gravity as to require measured consid-

eration of the issues propounded, we cite the following authorities, not as conclusive precedents, but as demonstrating that petitioner's separate trials for separate homicides do not offend "the very essence of a scheme of ordered liberty" or

> "violate a 'principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental' ". *Palko* v. *Connecticut*, 302 U. S. 319.

Flemister v. United States, 207 U. S. 372.

In the *Flemister* case, the accused was convicted of a criminal attempt against a public official by striking one Feliciano Celimin, a policeman, and by using vile, abusive and threatening language to him, contrary to an applicable provision of the Penal Code of the Philippines.

He pleaded in bar the fact that he had been convicted of similarly assaulting another public official, one Domingo Salvador, on the same occasion.

Mr. Justice Holmes, writing for a unanimous court, said at pages 374-5:

> "The only assignment of error that needs a word is that which was intended to rely upon a previous conviction that was pleaded and put in evidence. This was a conviction by a municipal court of a violation of ordinances of the city of Manila by disorderly conduct, a breach of the peace, and the assault upon one Domingo Salvador at the same time and place as the assault alleged in the complaint before us. Perhaps it should be added that a second complaint under the ordinances for slanderous, threatening and abusive language to Captain José Crame of the Manila Police Department was dismissed by the municipal judge on the ground that the offense could not be split up. *None of the acts alleged in these complaints was the assault upon Celimin*, relied upon in the present case, and it does not appear that the assault upon Celimin was relied on or proved as part of the disorderly conduct for which the plaintiff in

error was punished in the municipal court. It is unnecessary to consider whether the same conduct could be punished at the same time on the same grounds by both a superior and subordinate authority in the same jurisdiction. *There is nothing in the Philippine bill of rights that forbids assaults on two individuals being treated as two offenses, even if they occur very near each other in one continuing attempt to defy the law.* We cannot revise the finding of the courts below that the two offenses were distinct." (Emphasis supplied.)

Hotema v. United States, 186 U. S. 413.

The *Hotema* case, cited above, is very much in point.

In that case the defendant was indicted for the killing of three persons upon the same day. Upon consolidated indictments for two of the slayings, he was found not guilty by reason of insanity. On an indictment for the third slaying, he was found guilty.

He filed a plea of "once in jeopardy".

A unanimous court rejected the plea as "wholly without merit."

Badders v. United States, 240 U. S. 391.

The defendant was convicted upon 7 separate counts, each charging the mailing of a different letter in pursuance of a single scheme to use the mails to defraud. It is held that the offenses were separate and that each was distinctly punishable.

It is true that in the *Badders* case the seven separate prosecutions occurred in a single trial. Standing alone, the *Badders* case is not directly in point upon the question of multiple trials for simultaneous offenses, but when read in connection with the *Flemister* and *Hotema* cases, both cited above, it, too, represents this Court's holding that

separate offenses may be separately prosecuted and separately punished even though they are contemporaneous.

Petitioner has conceded that by the weight of the authority, the killing or injuring of two or more people by a single criminal mismanagement of an automobile results in several separately punishable offenses. In addition to *People* v. *Allen*, 368 Ill. 368, cited by the Supreme Court of Illinois in the instant case, see *Fleming* v. *Commonwealth*, 284 Ky. 209, *Commonwealth* v. *McGuire*, 313 Mass. 669, *State* v. *Fredland*, 200 Minn. 44, *Fay* v. *State*, 62 Okla. Crim. 350, *Lawrence* v. *Commonwealth*, 181 Va. 582, and other cases cited at 172 A. L. R. at page 1062.

A prosecution that is in accordance with the weight of judicial authority, even though that authority is represented by pronouncements of courts other than this Court, can hardly be so shocking as to deny due process of law.

Petitioner contends at least by strong inference that even if he was subject to separate punishment for each of the four homicides with which he has been charged, he should be prosecuted in a single case and not in separate trials.

We do not deal in this case with a situation in which a defendant has been *acquitted* of other offenses under such circumstances that if he has committed one of the offenses, he must have committed all of them. Such a situation is now under this Court's advisement in *Hoag* v. *New Jersey*, No. 40 to this Term. In the *Hoag* case, several men were robbed in a tavern by a single assailant. Hoag is accused of being the assailant. He was acquitted for the robbery of one of the victims but was subsequently convicted for the robbery of another victim. He either robbed all or none of the victims. Retrial after an *acquittal* of an alleged crime against one of several victims raises a question very different from that presented in this case.

Ciucci has been convicted of killing his wife and one other child. Since he does not assail the first of these convictions, Illinois may without denying due process declare that one who has been found guilty of one of several virtually simultaneous murders must suffer separate trials and separate punishments for the others of such murders.

Petitioner makes much of the fact that the present conviction carries with it the sentence of death, whereas the earlier convictions resulted only in sentence of imprisonment at the jury's hands. But a jury may well impose the death penalty for the murder of a child and a lighter penalty for the murder of a wife from whom a husband is estranged. It is neither for us nor for this Court to say that in imposing a greater penalty for the murder of a child, than has been imposed for the murder of a wife, the jury acts as an instrument of denial of due process.

In each of the following cases it has been declared that the Federal and State governments may separately prosecute upon the same state of facts. Recognizing that the instant case is one in which the State has conducted consecutive prosecutions for separate killings, we nevertheless deem these cases pertinent as evincing the principle that multiple prosecutions arising from a single set of facts do not in general deny due process where the same sovereign does not subject the same individual to a series of prosecutions arising from the same facts upon the same charge:

Moore v. Illinois, 55 U. S. 18.

In this case the Court sustained prosecutions by Illinois of a citizen who contended that Illinois' prosecution might be inconsistent with the subsequent Federal prosecution upon the same facts.

Fox v. Ohio, 46 U. S. 410.

In this case this Court held a defendant amenable to State prosecution although the same facts would render him vulnerable to a Federal prosecution, the State prosecution being for fraud and potential Federal prosecution being for counterfeiting.

United States v. Lanza, 260 U. S. 377 and Herbert v. Louisiana, 272 U. S. 312.

In these cases, this Court held that a defendant was subject to prosecution by both the Federal and a State government as a result of the same illicit dealings in intoxicating beverages.

Gavieres v. United States, 220 U. S. 338.

In this case, the accused was separately prosecuted for intoxication and for slandering, the two prosecutions arising out of precisely the same conduct. This Court perceived no double jeopardy.

The foregoing authorities, which are examples of hosts of similar cases, attest the truth that several punishments, even several separate prosecutions, for different criminal acts arising from the same or immediately related transactions, do not offend the conscience, traditions or sense of justice of the American people.

Therefore petitioner was not denied due process of law by the prosecution and conviction of which he complains in this case.

II.

Due process did not require that any previous allegation that evidence of other contemporaneous murders would be admitted against petitioner.

Petitioner cites and we have found no authority, nor are we aware of any principle of jurisprudence, that would require Illinois to charge in the indictment or otherwise admonish that upon the trial for the murder of his son Vincent, the State would offer evidence of the deaths of his wife and two other children, which deaths occurred contemporaneously with that of Vincent.

Petitioner does not appear to have made any motion for a bill of particulars.

Petitioner's argument proves too much; for the same logic would require the State to make discovery in the indictment or other pleadings of all acts, whether themselves criminal or not, of which it was intended to offer evidence at petitioner's trial.

No authority supports petitioner's contention. The universal practice is contrary to that contention.

Indeed, charging in an indictment that petitioner had murdered other persons at the same time might if evidence of such charges were not forthcoming in itself be prejudicial.

We submit that a State does not offend "the very essence of a scheme of ordered liberty" or

> "violate a 'principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental,"

when it separately and severally punishes four distinct homicides, each accomplished by a separate shooting.

The overwhelming weight of juridical opinion is to this effect.

In *Ebling* v. *Morgan*, 237 U. S. 627, this Court held that each of several successive but felonious cuttings of several mail bags might be punished separately. To be sure, in the *Ebling* case, there was a single prosecution, the defendant having been separately charged in several counts of the same indictment. But the principle of multiple prosecutions for multiple several although virtually simultaneous offenses is equally clear, as appears from *Flemister* v. *United States*, 207 U. S. 372, cited and considered above, where the prosecutions were separate.

Even if the instant case were one of technical jeopardy, which of course it is not, the Fourteenth Amendment does not categorically interdict several trials even for the same identical offense. In *Palko* v. *Connecticut*, 302 U. S. 319, this Court dealt with the constitutionality of a statute of Connecticut which permitted appeals and retrials at the instance of the State even after a judgment of acquittal. Palko, charged with murder in the first degree, was found guilty of murder in the second degree, which verdict operated as an acquittal of the greater offense, and sentenced to prison for life. Upon appeal by the State under the statute above noted, a new trial was awarded for errors in excluding testimony as to a confession, in the matter of cross examination and with respect to instructions to the jury. Upon retrial after timely plea of double jeopardy and invocation of the Due Process Clause, Palko was again convicted, this time of murder in the first degree, and a death sentence was imposed.

This Court affirmed in the historical opinion delivered by Mr. Justice Cardozo. Speaking of petitioner's second trial and conviction and summing up its conclusions, the Court said at page 328:

> "Is that kind of double jeopardy to which the statute has subjected him a hardship so acute and shocking that

> our polity will not endure it? Does it violate those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions?' "

In the *Palko* case this Court declared in measured terms that double jeopardy, even when it exists, in the true and literal sense of the term, does not so far offend traditional "concepts of ordered liberty" as to deny Federal due process.

Conclusion.

We respectfully submit that the judgment of the Supreme Court of Illinois should be affirmed.

Respectfully submitted,

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